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Technical assistance and capacity-building

Written statement* submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Technical assistance and capacity-building in the field of human rights in the Non-Self-Governing Territories

Introduction

At its 2005 session, the UN Economic and Social Council (ECOSOC), in adopting resolution E/RES/2015/49 decided to explicitly highlight the issue of the support to Non-Self-Governing Territories by the specialized agencies in the framework of the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV). Last year again, ECOSOC adopted by consensus such a resolution[1].

ECOSOC has reaffirmed the mandate of the specialized agencies and other organizations of the United Nations system to take all appropriate measures, within their respective spheres of competence, to ensure the full implementation of General Assembly resolution 1514 (XV) and stressed the imperative need to keep under continuous review the activities of the specialized agencies and other organizations of the United Nations system in the implementation of the various United Nations decisions relating to decolonization.

In order to comply with ECOSOC's requests and those expressed by the General Assembly in the framework of the annual resolution entitled "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations", the General-Secretary use to send a letter to the attention of the executive heads of a number of specialized agencies and other international organizations and to invite them to submit the information requested for inclusion in the report.

Since 2001[2], the Secretary-General includes the Office of the United Nations High Commissioner for Human Rights (OHCHR) among those agencies.

Western Sahara, the only Non-Self-Governing Territory without a recognized Administering Power and the legal status of the Kingdom of Morocco in relation to Western Sahara

Since 1963Western Sahara is listed by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples[3].

In 1966, Spain expressed itself in favour of the decolonization of Western Sahara through the exercise by the population of the territory of their right to self-determination. At that time, this suggestion received the support of Mauritania and the assent of Morocco. On the basis of that proposal, on 20 December 1966 the UN General Assembly adopted resolution 2229 (XXI), Inviting "the administering Power to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara, ...the procedures for the holding of a referendum under United Nations auspices ..."

In its Advisory opinion of 16 October 1975[4], the International Court of Justice (ICJ) answered to the questions raised by the General Assembly in resolution 3292 about the legal ties between Western Sahara and the Kingdom of Morocco. ICJ unambiguously stated that "The inferences to be drawn from the information before the Court concerning internal acts of Moroccan sovereignty and from that concerning international acts are... in accord in not providing indications of the existence... of any legal tie of territorial sovereignty."

In November 1975, Spain, the Kingdom of Morocco and Mauritania signed the Madrid Agreement whereby the powers and responsibilities of Spain, as the administering Power of the Territory, were transferred to a temporary tripartite administration composed by the Djemaa (leading body of Sahrawi tribes composed of elders and elected leaders), the Kingdom of Morocco and Mauritania.

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[1] "Support to Non-Self-Governing Territories by the specialized agencies and international institutions associated with the United Nations" (E/RES/2015/16)

[2] A/56/65

[3] Also called "Committee of 24"

[4] Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12

Does this Agreement have an effect on the legal status of the Western Sahara and/or the legal ties between the Non-Self-Governing Territory and the Kingdom of Morocco?

The answer lies in the legal opinion[5] that the Security Council requested in 2002 to the Under-Secretary-General for Legal Affairs, Mr. Hans Corell. The Legal Counsel stated that "The Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an Administering Power, a status which Spain alone could not have unilaterally transferred..."

Since 26 February 1976 Western Sahara is the only Non-Self-Governing Territory that has not a recognized Administering Power. On that date, Spain informed the Secretary-General that it had terminated its presence in the Territory of the Sahara and deemed it necessary to place on record that Spain considered itself thenceforth exempt from any responsibility of any international nature in connection with the administration of the Territory.

Subsequently, the UN General Assembly deeply deplored the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco and the extension of that occupation to the territory evacuated by Mauritania and urged Morocco to terminate the occupation of the Territory of Western Sahara[6].

It is 40 years now that Western Sahara is under the colonial occupation of the Kingdom of Morocco.

The primary responsibility of the United Nations towards Western Sahara

After the retreat of Mauritania from the Non-Self-Governing Territory, the UN General Assembly reaffirmed the inalienable right of the people of Western Sahara to self-determination and independence as well as the responsibility of the United Nations with regard to the decolonization of Western Sahara[7].

In 1990, the Security Council[8] approved the report of the Secretary-General it requested in 1988[9], which contains the full text of the settlement proposals as accepted by the two parties as well as an outline of the plan provided by the Secretary-General in order to implement those proposals.

In a subsequent report[10], the Secretary-General highlighted that "the two parties, namely the Kingdom of Morocco and the Frente POLISARIO, recognize in the settlement proposal that sole and exclusive responsibility for the organization and conduct of the referendum is vested in the United Nations...".

In 1991, the Security Council decided to establish a United Nations Mission for the Referendum in Western Sahara[11]. This was, and remain today, the only Peacekeeping operation mandated to enforce a very fundamental peoples' right: the right to self-determination.

The role of the Office of the High-Commissioner for Human Rights

When reading the reports submitted by ECOSOC's President throughout the years in compliance with the above mentioned ECOSOC's resolutions it appears that, with a single exception in 2004[12], the OHCHR never developed a support programme for Non-Self-Governing Territories.

Moreover, there is no record about such kind of programme neither in the reports submitted to the Commission on Human Rights or the actual Council by the various High Commissioners who have succeeded since 2001 nor in the annual reports of activities of the OHCHR.

In 2006, UN High-Commissioner for Human Rights, Louise Arbour, sent a Mission to Western Sahara and the refugee camps in Tindouf (Algeria)[13]. While the members of the Mission stressed in their conclusions that the Sahrawi people are not only denied their right to self-determination, but equally are severely restricted from exercising a series of other rights and that almost all human rights violations and concerns with regard to the people of Western Sahara, stem from

[5] S/2002/61
[6] UNGA resolution 34/37
[7] UNGA resolution 33/31
[8] UNSC resolution 658 (1990)
[9] UNSC resolution 621 (1988)
[10] S/22464
[11] UNSC resolution 680 (1991)
[12] E/2004/47
[13] http://www.arso.org/OHCHRrep2006en.pdf

the non-implementation of the right to self-determination, no further action was taken by the OHCHR until the visit to the Kingdom of Morocco in 2014 of the UN High-Commissioner for Human Rights, Navanathem Pillay.

Although in January 2014 the Sahrawi human rights defenders' organisations have set up the "Sahrawi National Commission for Human Rights" (CONASADH), composed by members residing in the occupied territory and others east of the separation wall or in the refugee camps of Tindouf, neither the technical mission that prepared the visit of the High-Commissioner, nor Mrs. Pillay deemed useful to meet them[14]. On the contrary, Mrs. Pillay offered technical assistance and capacity building to the regional commissions of the Moroccan "Commission Nationale des Droits de l'Homme", the National Human Rights Institution of the Occupying Power.

Recommendations

Recalling the terms of ECOSOC resolution E/RES/2015/16[15], the American Association of Jurists calls upon the UN High-Commissioner for Human Rights:

- to develop a programme of technical assistance and capacity-building in the field of human rights in the Non-Self-Governing Territories and to report thereon to the Human Right Council in the framework of the OHCHR annual report, as well as to the Committee of 24;
- to develop a specific technical assistance and capacity-building programme with CONASADH in the occupied territory as well as in the refugee camps in Tindouf (Algeria).

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[14] Mrs. Pillay welcomed the role played by the regional commissions of the Moroccan CNDH; a point of view that was reproduced in the UNSG report (S/2015/246) and subsequently by the Security Council in its last resolution (S/RES/2218 – 2015)

[15] OP 5. *Also reaffirms* that the recognition by the General Assembly, the Security Council and other United Nations organs of the legitimacy of the aspirations of the peoples of the Non-Self-Governing Territories to exercise their right to self-determination entails, as a corollary, the extension of all appropriate assistance to those peoples.